

# EXPLANATORY STATEMENT

## Defence Determination, Conditions of service Amendment Determination (No. 4) 2025

This Determination amends Defence Determination 2016/19, Conditions of service (the Principal Determination), made under section 58B of the *Defence Act 1903* and in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (AI Act).

Determinations made under section 58B of the Defence Act are disallowable legislative instruments subject to the *Legislation Act 2003*. These instruments are also subject to the interpretation principles in the AI Act.

The Principal Determination is exempt from sunseting under item 21A of section 12 of the Legislation (Exemptions and Other Matters) Regulation 2015. The exemption was granted as the instrument is a large and complex document that is subject to regular review and amendment. The exemption also provides certainty for members, stakeholders and administrators.

This Determination amends the Principal Determination which provides benefits for members of the Australian Defence Force (ADF) and their families as part of the member's conditions of service. The Principal Determination provides a range of benefits that recognise the unique nature of military service and the obligations and limitations that military service places on members and their families. Members undertake service in both the domestic and overseas environments, including on deployments. Specific benefits are provided for each environment.

### Purpose

The purpose of this Determination is to do the following:

- Updating two appointment residences that are allocated to ADF representatives for their State or Territory.
- Remove the provision that requires members who have received an advance to pay a bond or other fees to commence repayments from the first payday after the payday after the member received the advanced payment. The paragraph has been removed as paragraph 7.8.46.1.b specifies that the amount must be repaid over 26 fortnightly instalments which means paragraph 7.8.46.1.c is not required.
- Include Oslo, Norway and Kyiv, Ukraine as new posting locations, Oslo International School as a benchmark school for Oslo, Norway, and Ukraine as a hardship location to ensure members who are posted there have access to the overseas hardship package of benefits. Locations are considered hardship locations based on information provided by Defence's contracted service provider.
- Include Eritrea, Somalia, South Sudan and Sudan as hardship locations to ensure members who are posted to any of the locations have access to the overseas hardship package of benefits. Locations are considered hardship locations based on information provided by Defence's contracted service provider.
- Replace directly conferred decision makers with the Chief of Defence Force.
- Provide clarity on when a member's resident family can be unaccompanied resident family in the circumstance where all of a member's resident family are children.
- Amending the calculation of travel costs for compassionate reasons for members posted overseas, specifically when travel is to a location outside of Australia, to be consistent with the remainder of the compassionate travel provisions and to promote alignment with the intent of the compassionate travel policy.

- Make a range of technical amendments that do not alter the underlying policies, or the benefits which are currently provided by:
  - Correcting typographical errors.
  - Inserting legislative notes which improve readability and aid in the understanding of various provisions.
  - Removing some of the tables in Chapters 6 to 11 of the Principal Determination by rewriting the provisions to reflect contemporary drafting standards and improve readability.
  - Making technical amendments that promote consistency and the use of contemporary drafting styles within the Principal Determination to improve readability.

### **Operational details**

Details of the operation of the Determination are provided at annex A.

### **Retrospective application**

The retrospective application of this Determination does not affect the rights of a person (other than the Commonwealth) in a manner prejudicial to that person, nor does it impose any liability on such person.

### **Human rights compatibility**

The statement of compatibility under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* for this Determination is at annex B.

### **Review options**

Decisions that are made under the Principal Determination, as amended by this Determination, may be subject to inquiry under the ADF redress of grievance system provided under Part 7 of the Defence Regulation. Also, a person may make a complaint to the Defence Force Ombudsman.

### **Consultation**

Before this Determination was made, the consultation was undertaken with Navy, Army, Air Force, Directorate of Relocations and Housing, Pay Services and People Systems Branch, Defence Tax Management Officer, Defence Attaché and Overseas Management and Defence One Systems.

The rule maker was satisfied that further consultation was not required.

**Approved by:**

**Sarah Kate McGregor**  
Acting Director General  
People Policy and Employment Conditions

**Authority:**

Section 58B of the  
*Defence Act 1903*

***Defence Determination, Conditions of service Amendment Determination (No. 4) 2025***

***Operational details***

Section 1 of this Determination sets out the manner in which this Determination may be cited.

Section 2 provides the following commencement dates:

- Sections 1 to 4 of the Determination commence on the day the instrument is registered.
- Schedules 1 to 4 of the Determination commence on 10 April 2025.

Section 3 provides that this instrument has authority under section 58B of the Defence Act.

Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

***Schedule 1—Housing amendments***

Items 1 and 2 amend the table at subsection 7.6.23.1 of the Principal Determination which provides the ADF representative and the appointment residence in which they must live. The following amendments have been made:

- Item 1 amends the column titled 'Appointment residence' to replace the suburb of 'Ashgrove' with 'Enoggera'.
- Item 2 amends table item 2 to change the title of the appointment of the ADF representative and the associated appointment residence.

Item 3 repeals paragraph 7.8.46.1.c from the Principal Determination which provides that the repayment of a rental advance must commence on the first payday after the member received the advance. The paragraph has been removed as paragraph 7.8.46.1.b specifies that the amount must be repaid over 26 fortnightly instalments which means the paragraph is not required.

***Schedule 2—Post index location, public holiday and hardship location amendments***

Items 1 and 2 amend Annex 12.3.B of the Principal Determination which provides the list of locations overseas which attract a post index adjustment. The annex has been amended to insert Oslo, Norway and Kyiv, Ukraine as post index locations.

Item 3 amends Annex 15.6.A of the Principal Determination which provides a list of benchmark schools which are used for determining the amount of education assistance available to a member under Chapter 15 Part 6. The Annex has been amended to insert a benchmark school, the Oslo International School, for the posting location of Oslo, Norway.

Items 4 to 8 amend Annex 16.B of the Principal Determination which provide locations that are hardship locations for the purpose of overseas conditions of service. The Annex has been amended to insert Ukraine, Eritrea, Somalia, South Sudan and Sudan as hardship locations to ensure that members who are posted to any of the locations have access to the overseas hardship package of benefits.

***Schedule 3—Miscellaneous (directly conferred powers) amendments***

Item 1 amends section 5.11.9 of the Principal Determination which provides the member's eligibility for a short absence for removal if approved. The amendment repeals and substitutes subsection 5.11.9.2 to remove the directly conferred decision makers and replace them with the CDF. The subsection has also been rewritten to reflect contemporary drafting standards and improve readability.

Item 2 to 8 amend various provisions in the Principal Determination to remove directly conferred decision makers from the Principal Determination and replace them with the Chief of the Defence Force (CDF).

- Item 2 amends section 5.11.10 of the Principal Determination to remove references to 'decision-maker' and replacing them with 'CDF'.

- Item 3 and 7 amend various provisions in Chapter 7 Part 7 of the Principal Determination to remove references to 'Defence Housing Australia decision-makers' and replace it with 'the CDF'.
- Item 4 amends the note to subsection 9.7.5.2 to remove the reference to 'decision-maker' and replace it with 'CDF'.
- Item 5 amends the definition of a 'dangerous recreational activity' in section 15.1.3 to remove the reference to 'dangerous recreational activity decision maker' and replace it with 'CDF'.
- Item 6 amends various provisions in the Principal Determination to remove references to 'decision maker' and replace it with 'CDF'.
- Item 8 repeals various provisions from the Principal Determination to remove definitions of decision maker that are required to be removed consequential to the changes made under this Schedule.

Technical amendments made under this Schedule do not alter the underlying policies, or the benefits which are currently provided.

#### *Schedule 4—Miscellaneous amendments*

Item 1 amends the definition of 'member' in section 1.3.1 of the Principal Determination which provides definitions that apply across the entirety of the Principal Determination. A legislative note has been added to the definition of 'member' which highlights that section 1.2.1 restricts the application of the definition to members on continuous full-time service, unless otherwise stated.

Items 2 and 3 amend section 1.3.20 of the Principal Determination which provides when a person is unaccompanied resident family of a member. Item 2 inserts a clarifying note under subsection 1.3.20.1 which provides that subsection 1.3.20.2 displaces subsection 1.3.20.1 if all of a member's resident family are children. Item 3 adds paragraphs 1.3.20.2.c and d. The addition of these paragraphs ensures that members whose resident family are all children also have to apply for recognition of their children as unaccompanied resident family using the approved form, as well as meet the criteria for a type of unaccompanied resident family under Subdivision 4. This ensures consistency with the general rule under subsection 1.3.20.1.

Items 4 to 6 amend sections 2.3.22 and 3.2.47K of the Principal Determination to make the following minor technical amendments:

- Subsection 2.3.22.1 which provides when a member is eligible for a special benefit under section 3.2.23 has been amended to substitute 'apply' with 'applies' to correct a grammatical error.
- Subsection 3.2.47K.2 which provides that on the day an Air Force member meets specific criteria set out in the section they will be placed on the relevant pathway and competency stream and given an Officer Aviation increment. The subsection has been amended by:
  - Substituting 'the following apply' with 'all of the following apply.' to promote consistency within the Principal Determination; and
  - Substituting 'the relevant of the following' with 'one of the following' to promote the use of contemporary drafting styles.

Items 7 and 8 amend Annex 3.2.B of the Principal Determination which provides salary non-reduction periods for members in specified employment categories. The following salary non-reduction periods are removed as their end date has passed and they are no longer required.

- Annex 3.2.B Part 1, table item 8, which applied to the Army Musicians Grade 2 employment category, and expired on 7 March 2025.
- Annex 3.2.B Part 2, table items 18 and 19, which applied to the following employment categories that expired on 20 January 2025:
  - Army Supervisor Section Supply Chain (Corporal) who have not completed the Mounted Leader Course.

- Army Unit Quartermaster Advanced (Corporal) who have not completed the Mounted Leader Course.
- Annex 3.2.B Part 2, table item 20, which applied to the Carpenter Grade 2 employment category, and expired on 27 November 2024.

Items 9 to 11, 13 and 14 make technical amendments to a number of sections within the Principal Determination to improve conciseness and convert tables into text form to improve readability within the respective provisions.

Item 12 amends section 7.8.17A of the Principal Determination which provides the contribution a member who has unaccompanied resident family that is also a member must make when they occupy a home for which rent allowance is payable. Subsection 7.8.17A.1 has been amended to substitute 'resident family' with 'unaccompanied resident family' to clarify that the section applies when a member has unaccompanied resident family who is also a member.

Item 15 amends section 15.3.35 of the Principal Determination which provides travel for compassionate reasons when a member or the member's partner has a close relative that has a serious or very serious illness, or their close relative dies. Paragraph 15.3.35.4.b has been amended to clarify that the member is eligible for the lesser of the cost of the fares paid for the travel or the difference between the allowable travel cost from the overseas posting location to the overseas location of the close relative and return and the allowable travel cost from Sydney, Australia to the overseas location of the close relative and return.

Item 16 amend various provisions in Chapter 6 and Chapter 7 of the Principal Determination to omit and substitute reference to 'both of the following' with 'all of the following' and 'either of the following' with 'any of the following' to improve readability and better inform the reader of the intent of the provision.

Technical amendments made under this Schedule do not alter the underlying policies, or the benefits which are currently provided.

#### *Schedule 5—Transitional provisions*

Clause 1 defines the Defence Determination for this Schedule as the Defence Determination 2016/19, Conditions of service, as in force from time to time.

Clause 2 provides that a member who was on a long-term posting to Ukraine between 1 April 2025 and the commencement of this Determination is eligible for any benefits that they would have been eligible for had the changes made by items 2 and 8 of Schedule 2 of this Determination had applied at the time.

**Defence Determination, Conditions of service Amendment Determination (No. 4) 2025****Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

**Overview of the Determination**

The purpose of this Determination is to do the following:

- Update appointment residences that are allocated to ADF representatives for their State or Territory.
- Remove the provision that requires members who have received an advance to pay a bond or other fees to commence repayments from the first payday after the payday after the member received the advanced payment. The paragraph has been removed as paragraph 7.8.46.1.b specifies that the amount must be repaid over 26 fortnightly instalments which means paragraph 7.8.46.1.c is not required.
- Include Oslo, Norway and Kyiv, Ukraine as new posting locations, Oslo International School as a benchmark school for Oslo, Norway, and Ukraine as a hardship location to ensure members who are posted there have access to the overseas hardship package of benefits.
- Include Eritrea, Somalia, South Sudan and Sudan as hardship locations to ensure members who are posted to any of the locations have access to the overseas hardship package of benefits.
- Replace directly conferred decision makers with the Chief of Defence Force.
- Provide clarity on when a member's resident family can be unaccompanied resident family in the circumstance where all of a member's resident family are children.
- Amending the calculation of travel costs for compassionate reasons for members posted overseas, specifically when travel is to a location outside of Australia, to be consistent with the remainder of the compassionate travel provisions and to promote alignment with the intent of the compassionate travel policy.
- Make a range of technical amendments that do not alter the underlying policies, or the benefits which are currently provided by:
  - Correcting typographical errors.
  - Inserting legislative notes which improve readability and aid in the understanding of various provisions.
  - Removing some of the tables in Chapters 6 to 11 of the Principal Determination by rewriting the provisions to reflect contemporary drafting standards and improve readability.
  - Making technical amendments that promote consistency and the use of contemporary drafting styles within the Principal Determination to improve readability.

**Human rights implications***Right to the enjoyment of just and favourable conditions of work*

The protection of a person's right to remuneration engages Article 7 of the International Covenant on Economic, Social and Cultural Rights. Article 7 ensures just and favourable conditions of work, including remuneration, safe and healthy conditions, equal opportunity and reasonable limitations.

*Right to an adequate standard of living*

The protection of a person's right to an adequate standard of living engages Article 11 of the International Covenant on Economic, Social and Cultural Rights. Article 11 recognises the right of everyone to an

adequate standard of living for them and their family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

### *Right of the child to education*

The protection of a child's right to education engages Article 28 of the Convention on the Rights of a Child. Article 28 requires States to provide access to different types of education.

### **Assessment of compatibility**

Schedules 1, 3 and 4 make amendments to the Principal Determination which do not change the underlying policies or benefits. As such, they do not engage with any of the applicable rights or freedoms.

Schedule 2:

- Items 1 and 2 are compatible with human rights as they ensure that the rates of child supplement and location allowances payable to members posted overseas reflect changes to the average annual salary of members posted overseas in line with the cost of living.
- Item 3 is compatible with human rights by providing education assistance for the children of members who are on long-term postings overseas as a part of the member's conditions of service package. The item ensures that children accompanying members to a posting location are able to attend schools of a similar standard to those in Australia.
- Items 4 to 8 promote the right to the enjoyment of just and favourable conditions of work and to an adequate standard of living by ensuring members who are posted to locations where they may experience difficulties or hardships have access to the overseas hardship package of benefits as a part of their conditions of service.

### **Conclusion**

This Determination is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.